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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,432	05/05/2004	Walter K. McCarter	10893.3801	3431
22235	7590	11/04/2004	EXAMINER	
MALIN HALEY AND DIMAGGIO, PA 1936 S ANDREWS AVENUE FORT LAUDERDALE, FL 33316			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/709,432

Applicant(s)

MCCARTER ET AL.

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 070704.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains the legal phraseology "said". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites "the backing material" without antecedent basis. This recitation renders the claim indefinite since it is unclear what structure forms this backing material.

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Claim 12 recites "the protective shield" without antecedent basis. This recitation renders the claim indefinite since it is unclear what structure forms this claimed protective shield.

Claims 12-15 are confusing in reciting in the preamble "The vest of claim 11", since claim 11 does not claim a vest. Rather, claim 11 claims a cooling garment for wearing under a vest. Thus, the cooling garment is claimed and the vest is recited only functionally. It is unclear whether claims 12-15 are intending to recite that the cooling garment is in the form of a vest, or whether they recite "vest" erroneously and should recite "the garment of claim 11".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Lofgren et al (5,913,406).

Lofgren et al disclose a garment cooled by circulating air. The garment comprises a sheet of moisture resistant material (plastic 2) having an inner surface, an

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outer surface, and a plurality of protrusions 3. The protrusions 3 are made of plastic (col. 1, lines 60-63), thus being generally moisture resistant as claimed. The protrusions (3) form air channels on the inner surface, directed towards a wearer (see air channels formed between protrusions; col. 1, line 64 through col. 2, line 5). The protrusions are adapted for allowing air flow vertically through a top portion and a bottom portion of the garment, as claimed.

7. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Ichigaya (US 2004/0083526).

Regarding claims 1 and 11, Ichigaya discloses a cooling garment including a fabric body (10) having in inner surface, an outer surface, and a plurality of raised protrusions (22) forming air channels on the inner surface directed towards a wearer (paragraph 0030). The protrusions (22) comprise substantially parallel protrusions; see opposing parallel sides 22b (Figs. 2a and 3) or alternatively see parallel members 22a which extend perpendicular to the surface of the garment (Figs. 2b and 3, and embodiment of Fig. 6). A fan (50) is provided in communication with the air channels which produces exhaust air flow, drawing air out of the space between the protrusions as claimed (0035). This fan forms a means for drawing air out of the garment from the air channels as in claim 11. Ichigaya discloses an embodiment wherein the fabric body comprises Spandex (see last two lines of paragraph 0049), which is a stretchable fabric as in claims 1 and 13. The back panel (Fig. 1b) of the garment is also made of

Spandex in this embodiment. The back panel forms a "backing material" to the extent recited in claim 6, and is made of Spandex which is stretchable as in claim 6.

The garment comprises a plurality of connectable front and back sections (see Fig. 1) as in claim 2. The protrusions are "intrinsic" to the inner surface, to the extent recited in claim 3. The protrusions are made of plastic (0057-0058), such as polyethylene, which is a moisture resistant material as in claim 4.

Regarding claim 5, the body garment includes portions made of materials which are moisture resistant. For example, the body garment comprises rubber; see rubber waistband disclosed in 0067 and shown in Fig. 9, and rubber cuffs or wristbands disclosed in 0099 and Fig. 13. Also, the garment body has an inner layer formed by mesh 21, which is made of plastic. Thus, the body garment comprises a moisture resistant material as in claim 5.

The fan (50) includes a power switch (0044) as in claim 7. The fan (50) has a cord (62) which is attached to and thus plugged into the battery 61. Alternatively, paragraph 0036 discloses that the battery may be provided with a "charging connector" for connecting the secondary battery to an exterior power source, thus comprising a plug as in claim 7. The fan (50) has a portable power source (battery 61) in electrical communication with the fan as in claim 8. The fan is detachable from the garment. The means for attaching and detaching the fan from the garment comprises an attaching mechanism as shown in Figs. 10a-10c and described in paragraphs 0038-0040, which structure forms a quick disconnect baffle as in claim 9.

Regarding claim 10, Ichigaya discloses an embodiment in which the body garment is made of a plastic sheet, for example vinyl (0049). This material is moisture resistant as in claim 10. The protrusions (22) are made of plastic (0058), which is moisture resistant as in claim 10. The protrusions form air channels on the inner surface directed generally towards a wearer (see air channels shown in Fig. 2b and paragraphs 0030 and 0035), allowing air flow vertically through a top portion and bottom portion of the garment (0034-0035).

Regarding claim 12, the garment forms a "protective shield", protecting the wearer from the elements. The sheet material of the garment body 10 is part of this "protective shield".

Regarding claim 14, the protrusions (22) are made of soft plastic(0057-0058), this material being generally flexible and water resistant as claimed. Furthermore, in paragraph 0065, Ichigaya discloses that the spacer (which includes protrusions 22) is flexible.

Regarding claim 15, the garment includes a quick release for the fan (see magic tape fasteners as in paragraph 0037 or see fastening means disclosed in Figs. 10a-10c and 0038-0043).

Conclusion

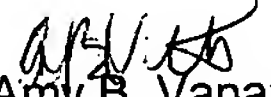
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Amy B. Vanatta
Primary Examiner
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